

PAYNE FAMILY TRUST

IBLA 87-132

Decided January 31, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-96902.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings

The regulation at 43 CFR 3112.5-1(b)(4) precludes a trustee from filing a simultaneous oil and gas application for a single parcel on behalf of more than one entity with which he has a fiduciary relationship. Applications filed in violation of this prohibition are properly rejected.

APPEARANCES: Charles L. Kaiser, Esq., and Eliza F. Hillhouse, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Payne Family Trust, through its trustee, has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated October 10, 1986, rejecting its simultaneous noncompetitive oil and gas lease offer, W-96902, because the application on which it was based was part of a multiple filing in violation of 43 CFR 3112.5-2(a).

Appellant's application was drawn with first priority for parcel WY-201 at the August 1985 simultaneous oil and gas lease drawing. The BLM decision noted that appellant's lease offer was signed by Don B. Payne as trustee. The record discloses that appellant's simultaneous oil and gas application filed for parcel WY-201 in the August 1985 drawing was also signed by Don Payne in his capacity as trustee. The BLM decision further stated: "In adjudicating your offer, we discovered that Don B. Payne also signed as president of Payne Radio Inc., on another simultaneous application, which included parcel WY-201, also in the August 1985 filing." In support of its decision rejecting the application, BLM cited the regulation which provides: "Filings by * * * officers of a corporation, under any agreement, scheme, plan or arrangement whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited." 43 CFR 3112.5-1(b)(3).

On appeal counsel states that the Payne Family Trust is a testamentary trust established by the will of Byrum A. Payne in 1974. Counsel further

states that all income from the trust is paid to Rubye S. Payne, the wife of Byrum A. Payne, so long as she lives and does not remarry. In the event of the death or remarriage of Rubye S. Payne, the trust income is to be divided among and paid to the children of Byrum A. and Rubye S. Payne, namely, Don B. Payne, Bobby B. Payne, and Dorothy Payne Harris. The trust instrument named Don B. Payne as trustee. The statement of reasons further declares that Don B. Payne is the non-salaried president of Payne Radio Inc., a Tennessee corporation whose sole shareholders are Jeffrey B. Payne, David B. Payne, and Donna Ann Payne Pierce, the adult children of Don B. Payne.

On appeal it is asserted by counsel for the trust that: "No 'agreement, scheme, plan or arrangement' exists, either formally or informally, by which Payne Radio acquires an interest or receives a benefit from any oil and gas lease issued to Don Payne or to the Trust by the United States." Similarly, appellant contends, there is no plan, arrangement, agreement, or scheme by which the Trust acquires an interest in or receives a benefit from any oil and gas lease issued to Don Payne or to Payne Radio by the United States. Appellant asserts that at all relevant times the trust beneficiaries and the directors and shareholders of Payne Radio approved of Don Payne's practice of submitting lease applications on behalf of the Payne Family Trust and Payne Radio Inc. Appellant has submitted the affidavits of the beneficiaries of the Payne Family Trust and the shareholders of Payne Radio Inc., signed by each individual in which they deny under oath the existence of any agreement, scheme, plan, or arrangement. See Exhs. B through H.

Appellant argues that Don B. Payne did not breach his fiduciary duty to the shareholders of Payne Radio Inc. Appellant cites the Board's decision in Lawrence C. Harris, 63 IBLA 132, 89 I.D. 185 (1982), for the proposition that corporate officers are not precluded from filing applications on their own behalf and that a corporate interest in the officer's filing which might give rise to an improper multiple filing is not to be presumed. Appellant contends that Don B. Payne serves without salary and owns no interest in the corporation and, further, that the shareholders have agreed to a series of relationships whereby they have consented to Don B. Payne's filing of oil and gas lease applications on behalf of the Payne Family Trust. Appellant further argues that Don B. Payne has not breached his fiduciary duty to the Payne Family Trust. Appellant asserts: "There can be no breach of fiduciary duty to the trust if all beneficiaries of the trust consent to the action of the fiduciary" (Statement of Reasons at 17). Appellant asserts that the trust beneficiaries have provided their consent to the activities of Don B. Payne. See Exhs. B through E. Appellant has requested an evidentiary hearing. This request was taken under advisement by order of the Board dated October 23, 1987.

The question raised is whether BLM properly rejected the application pursuant to the relevant regulation at 43 CFR 3112.5-1.

[1] We must recognize, as appellant has pointed out, that the fact that an individual who files a lease application in his own behalf is also an officer in a corporation does not automatically give rise to a breach of

fiduciary obligation which would cause the application to be considered an application filed on behalf of the corporation. Lawrence C. Harris, supra; Raymond J. Stipek, 74 I.D. 57 (1967). Thus, in Harris this Board reversed BLM decisions rejecting applications filed by different individuals who were officers of a corporation where no application was filed on behalf of the corporation itself for the parcel involved and where the shareholders expressly permitted such filings on the ground the corporation did not have an interest in the applications filed by the various officers. Similarly, in Raymond J. Stipek, supra, in reversing a rejection of applications filed by two individuals who were both officers and 50 percent shareholders in a corporation where no application was filed on behalf of the corporation, the Department held that "the mere existence of a fiduciary relationship between the appellants and their corporation would not create a corporate interest in the filings made by the appellants." 74 I.D. at 61; see also D. M. Dowdle, 46 IBLA 83 (1980) (rejection of simultaneous offers filed by corporate officers reversed where corporation did not file).

All of these cases share a common thread: While applications were filed by corporate officers in their individual capacity, no competing application was filed on behalf of the corporation itself. These prece-dents may be contrasted with those cases where the Board has upheld rejection of simultaneous oil and gas applications filed by corporate officers where a competing application has been filed on behalf of the corporation. See William R. Boehm, 36 IBLA 346 (1978); Graybill Terminals Co., 33 IBLA 243 (1978); Panra Corp., 27 IBLA 220 (1976). Notwithstanding the fiduciary relationship of an officer to his corporation, appellant urges that there is no breach of fiduciary responsibility which would create a corporate interest in a competing application filed by an officer where the shareholders have expressed their consent to such a relationship. Although we have not been cited to any cases where the Board went this far in the face of a conflicting application filed by the corporation itself, we acknowledge that such an exception where there is shareholder consent was suggested by our opinion in Graybill Terminals Co., supra. However, we are precluded from reaching such a ruling in the factual context of the present appeal.

The record clearly establishes that Don Payne has a fiduciary relationship with both the corporation of which he is the president and the Payne Family Trust of which he is the trustee. The relevant regulations specifically prohibit "separate filings by a trustee * * * on behalf of 2 or more beneficiaries on the same parcel." 43 CFR 3112.5-1(b)(4). In a case considered by the Board en banc this regulation was held to constitute a per se prohibition of a trustee from filing applications on the same parcel on behalf of two or more beneficiaries. Bruce A. Blakemore Estate Trust, 62 IBLA 336 (1982). Thus, the Board stated: "We must conclude that separate filings by a particular trustee on behalf of two or more trusts on the same parcel is prohibited by 43 CFR 3112.6-1(c)(4). [1/] The

1/ The Department published the renumbered regulation, 43 CFR 3112.5-1(b)(4), in the Federal Register on July 22, 1983, 43 FR 33657 (July 22, 1983), as part of the Department's regulatory revision of the simultaneous oil and gas leasing system.

prohibition holds true regardless of the nature of the trust agreements themselves. Commonality of trustee is the key." Id. at 340.

The Departmental interest in maintaining the integrity and fairness of the simultaneous noncompetitive oil and gas filing system in accordance with the statutory directive to issue noncompetitive oil and gas leases to the first-qualified applicant 2/ provides a rational basis for application of this per se rule. See Bruce A. Blakemore Estate Trust, supra at 341 n.6. The authority of the Secretary of the Interior to implement per se rules in the administration of the simultaneous oil and gas leasing program has been upheld where such regulations facilitate administration of the leasing program, clearly notify lease applicants of the relevant requirements, are consistently applied, and further a statutory purpose. See KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985); Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980); William Reppy (On Reconsideration), 91 IBLA 191 (1986), aff'd Reppy v. Department of the Interior, C 86-0213 (D. Wyo. Jan. 28, 1988).

Hence, we must conclude that BLM properly rejected appellant's oil and gas lease application. In view of the absence of any material issue of fact regarding Don Payne's status as a trustee, appellant's hearing request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

2/ 30 U.S.C. | 226(c) (1982) (amended 1987). The simultaneous noncompetitive oil and gas leasing regulations at 43 CFR Subpart 3112 were promulgated to implement this requirement for tracts of land embraced in former leases which expired or terminated by operation of law. Pursuant to the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256, section 17 of the Mineral Leasing Act of 1920, codified at 30 U.S.C. | 226 (1982), was amended to require all lands to be posted for competitive bidding prior to any noncompetitive leasing to the first-qualified applicant.